

## Procurement Guidance - (1/2014)

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### **T3.8.4 Government Sources of Products/Services** Revised 1/2010

#### **A Use of Government Sources** Revised 7/2007

##### **1 Mandatory Sources** Revised 1/2012

a. *General.* The FAA will generally satisfy requirements for products and services from commercial sources, or when in FAA's best interest, from or through Government sources. In some cases, FAA must purchase from or through Government sources or programs: Randolph-Sheppard Act, and Javits-Wagner-O'Day Act (JWOD) are mandatory sources for satisfying certain FAA purchases.

b. Except as otherwise provided by law or FAA policy, FAA will satisfy requirements for products and services from or through the sources listed below in descending order of priority:

(1) FAA inventory and excess inventory from other agencies;

(2) Supply or service sources mandated by the Randolph-Sheppard Act and by the Javits-Wagner-O'Day Act (JWOD); and

(3) Commercial sources, Federal Supply Schedules, or other sources.

c. The Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) program is a mandatory source when applicable (see paragraph 6. below). Supplies procured through the SAVES program comply with JWOD requirements.

##### **2 Excess Inventory** Revised 7/2007

a. The FAA should consider using excess personal property to fulfill its requirements when it is cost effective and the excess personal property will meet FAA's needs. Excess personal property (which excludes real property, Government-furnished property, and contractor-acquired property) is any personal property under the control of a Federal agency that is not required for its own needs. The FAA Reutilization and Disposal Process and Procedure Guide, dated 10/2006, provides additional guidance about excess personal property.

b. FAA offices may obtain more information about Government-wide personal property program by contacting GSA Federal Acquisition Service at (800) 488-3111 or GSA's Federal Acquisition Service website.

c. *GSAXCess.* GSA established GSAXCess as a central website for agencies to both post and search for excess property. The website provides an efficient means to search for excess property available in other agencies that may meet the needs of the FAA, or to post excess property no longer needed for operations.

### 3 Acquisition Procedures for Purchases from Federal Prison Industries Revised 1/2010

a. *General.* Federal Prison Industries, Inc. (FPI, also known as UNICOR) is a self supporting, wholly owned Government-owned corporation of the District of Columbia that provides training and employment for prisoners confined in federal penal and correctional institutes through the sale of its products and services to Government agencies. Classes of FPI produced products and services are listed in the FPI schedule which can be accessed at <http://www.unicor.gov> or by submitting a written request to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

b. *Applicability.* The procedures in AMS Procurement Guidance T3.8.4.A.4.c apply to all procurements involving products available from FPI, including procurements from a Qualified Vendors List, unless one or more of the exceptions below apply:

(1) The monetary value of the procurement would not require a competitive procurement process under AMS Procurement Policy 3.2.2.4 (pertaining to procurements that do not exceed \$10,000);

(2) A market analysis would not be required under AMS Procurement Policy 3.2.2.4 to support a single-source procurement of the product (e.g., emergency procurement);

(3) Suitable used or excess products are available from the government;

(4) The products are acquired and used outside the United States;

(5) Services are being acquired; or

(6) The FAA has obtained a waiver from FPI. If FAA seeks a waiver from applying AMS Policy and Guidelines normally applicable to acquisitions involving products available from FPI, then it will request a waiver with respect to a particular product or class of products by using the waiver procedures on FPI's website.

c. *FPI Acquisition Procedures.* The FAA must use the following acquisition process for procurements involving products available from FPI. The three principal stages in this process are market analysis, competition (if required), and award.

(1) *Market Analysis Stage.* The FAA will conduct market analysis before purchasing a product of the type listed in the FPI Schedule. The market analysis will compare the product offered by FPI to the products available from private-sector suppliers that best meet FAA's needs in terms of price, quality, and time of delivery.

If the FAA Contracting Officer (CO) determines that the FPI product is equivalent in terms of price, quality, and time of delivery to those products available from the private sector that best meet FAA's needs, the CO will determine that the product offered by FPI is the best value to FAA and acquire that product from FPI without proceeding to the competition stage described below. The "equivalence" determination in the preceding sentence requires that FPI's product be

equivalent with respect to each of the three criteria of price, quality, and time of delivery, but does not require that FPI's product be equivalent in a precise mathematical sense if such a comparison is infeasible.

The CO's procurement determination will be documented and made part of the contract file. This is a unilateral determination made at the discretion of the CO. If insufficient information is obtained through market analysis to support a best value determination, the CO will move to the competition stage.

(2) *Competition Stage.* If the CO does not determine that the product offered by FPI is the best value to FAA at the market analysis stage, then FAA will acquire the product using competitive procedures set forth below:

(a) The CO must post a public announcement for any acquisition for products available from FPI in accordance with AMS Procurement Policy 3.2.1.3.12.

(b) The FAA will solicit offers for the procurement and will include FPI in the solicitation process. A timely offer from FPI will be considered in light of the product description, product specifications, and product evaluation criteria listed in the solicitation.

(3) *Award Stage.*

(a) Award will be made to the source offering the product that FAA determines will provide the best value to FAA in terms of the product description, product specifications, and product evaluation criteria listed in the solicitation.

(b) *Procurement from FPI.* If the CO determines that FPI's products offer the best value to FAA, then FAA will enter into a procurement agreement with FPI. The agreement will be similar to FAA's agreements with other Federal agencies and may require representations and certifications appropriate for the particular procurement.

#### **4 Randolph-Sheppard Act** Added 7/2007

The Randolph-Sheppard Act gives priority to the blind in operating vending facilities. The Act requires agencies to provide suitable vending facility sites to blind vending operators in Government-owned or occupied buildings, and requires vending machine income to be shared with blind vendors or state agencies for the blind on property under the Government jurisdiction. The FAA must comply with the provisions of the Randolph-Sheppard Act. FAA procedures for vending facility operations under the Randolph-Sheppard Act are contained in Appendix 2.

#### **5 Javits-Wagner-O'Day Act (JWOD)** Revised 7/2008

- a. The JWOD Act governs products and services offered for sale by workshops of the blind or other severely handicapped persons. The Committee for Purchase from People Who are Blind or Severely Disabled (referred to below as the “Committee”) is an independent Government activity responsible for determining products and services to be purchased from the central non-profit agencies National Institute for the Blind (NIB) and NISH (formerly National Institute for the Severely Handicapped) (both are referred to below as AbilityOne (previously JWOD) agencies).
- b. The FAA must comply with the provisions of the JWOD Act by considering certain purchases from the Committee when they are capable of providing required products or services and meeting FAA’s required delivery dates.
- c. The Committee maintains a "Procurement List" of all supplies and services that Government agencies must purchase. Examples of items on the Procurement List include cleaning supplies, clocks, office supplies, writing instruments, and breakroom supplies. FAA ordering offices may obtain a copy of the Procurement List, or information whether a given product or service is on the Procurement List, from: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Room 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461, telephone (703) 603-7740. The Procurement List is also available on the AbilityOne website.
- d. GSA’s Federal Acquisition Service is the primary distributor of AbilityOne office supplies and other general use products. When a product is not available through FAA’s SAVES Program (see discussion in paragraph 6. below about SAVES), FAA ordering offices may purchase AbilityOne items from GSA’s Stock Program (AbilityOne items are identified in the GSA Supply Catalog and GSA Customer Supply Center Catalogs), from Federal Supply Schedule commercial vendors (limited to certain vendors on GSA Schedule 75 III A), or directly from NISH or NIB (the FAA ordering office must obtain direct order authorization from NISH or NIB prior to placing orders directly) .
- e. FAA ordering offices may obtain items on the Procurement List from commercial sources if:
- (1) The AbilityOne agency cannot provide items within required delivery dates and a commercial source can; or
  - (2) The AbilityOne agency cannot economically produce the required quantities. Prior to purchasing from a commercial source, the ordering office must obtain a waiver from the AbilityOne agency.
- f. Agencies representing AbilityOne accept the Government purchase card for most items; whenever possible, purchasers should use this method of payment.

## **6 Strategic Sourcing for the Acquisition of Various Equipment and Supplies (SAVES) Program** Revised 1/2012

- a. Use of the SAVES Program is mandatory, unless waived by the CFO (See AMS Procurement Guidance T3.8.6).
- b. SAVES products and services include non-NAS information technology (IT) hardware (enterprise servers and peripherals), Commercial-off-the-Shelf (COTS) software, video teleconferencing and support, general office supplies, office equipment (printers, copiers and multifunctional devices), and express and ground delivery services.
- c. SAVES contracts have stipulations to ensure that when FAA orders through a SAVES contract vendor, AbilityOne products will be delivered when applicable and possible.
- d. Use of SAVES Office Supply and Office Equipment contracts by organizations and facilities located outside the continental United States, including Alaska, Hawaii, U.S. Territories, and foreign countries is optional. Product availability and low shipping costs often make the purchase of these items locally a better value for the FAA.

## **7 Other Government Sources** Added 7/2007

a. *Federal Supply Schedules.* The GSA Federal Supply Schedule (FSS) program provides Federal agencies with a simplified process for obtaining commonly used products and services at prices associated with volume buying. The FAA may purchase from FSS contractors used when in FAA's best interest, e.g., these sources represent the best value, prices are most advantageous, delivery is most expeditious, or quality products or services are offered. (See AMS Procurement Guidance T3.8.3, Federal Supply Schedules, for additional guidance on this subject.)

b. *Defense Logistics Agency.* The Defense Logistics Agency (DLA) is responsible for assuring that Federal agencies are supplied with their fuel requirements. When in the FAA's best interest, DLA may be used. However, it may not always be to FAA's advantage to use DLA contracts to fulfill fuel needs; COs may be able to obtain better prices and services through local competition. Information about DLA-managed stock, including fuel, can be found on the DLA website.

c. *Printing and Related Products.*

(1) "Government printing" means printing, binding and blank bookwork for the use of an executive department, independent agency, or establishment of the Government. "Related products," means products that are used and equipment that is usable in printing and binding operations. The purchase of preprinted documents is not considered printing services, and is not subject to this section.

(2) The FAA may acquire products and services from the Government Printing Office (GPO), or those managed by GSA, if in FAA's best interest.

(3) Requisitioners should obtain approval from the cognizant FAA printing office before purchasing in any manner, whether directly or through purchases of other products or services,

printing and related products. Examples of printing requiring this approval include composition, plate making, presswork, binding, silk-screening of specialty advertising items, and micro-graphics (when used as a substitute for printing). Note that simple copying of a printed document does not constitute printing.

## **8 Use of Government Sources by Contractors** Added 7/2007

a. *General.* The CO may authorize contractors, or subcontractors, performing under cost-reimbursement contracts, other types of contracts when appropriate, or contracts under Javitts-Wagner-O'Day Act, to use Government sources of supply. Government sources of supply include: stock programs of GSA and Departments of Defense and Veteran's Affairs, and Federal Supply Schedules. The CO should consider the following before authorizing contractor use of Government sources: administrative costs of placing orders, impact of potential delivery delays, cost, suitability, and recommendations from the contractor. The CO should issue authorizations to subcontractors through, and with the approval of, the prime contractor.

b. *Authorization.*

(1) *Ordering Against FSS Contracts.* Contractors must follow the terms of the applicable FSS contract and include with each order a copy of the authorization letter (unless previously provided to the FSS contractor). If an FSS contractor refuses to honor the contractor's order, the CO should report the matter to GSA, FCO, Washington, DC 20406.

(2) *Ordering from Government Stock.* The CO should request authorization from the agency managing the stock. The CO should also submit with the request: the contractor's mailing, freight, and billing addresses; a copy of the authorization letter; the prime contract number; and the effective date and duration of the contract.

(a) GSA. Submit request to GSA, FXS, Washington, DC 20406, after obtaining an activity address code for the contractor.

(b) VA. Submit request to Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90), Department of Veteran's Affairs, 801 Vermont Avenue, Washington, DC 20420.

(3) Title to property obtained by the contractor will vest in the parties as provided by the contract, unless otherwise stated.

(4) Appendix 1 contains a sample letter authorizing cost-reimbursement contractor's use of Government contracts.

## **9 National Wireless Program** Added 1/2012

a. To take advantage of economies of scale and thereby provide wireless devices and related services at a substantially reduced cost, FAA has centralized the procurement of non-secure

devices and secured and non-secured services. Only the National Wireless Program (NWP) may enter into contracts with cellular and satellite providers. No other person or organization is authorized to enter into any contract or renew current contracts for cellular devices, services, or peripherals on behalf of the FAA, regardless of the procurement method used.

b. FAA Order 1830.9 further specifies internal management and operating procedures related to the management of cellular and satellite devices and services, transferring and porting telephone numbers.

## **B Clauses**

[view contract clauses](#)

## **C Forms**

[view procurement forms](#)

## **D Appendix**

### **1 Contractor Authorization Letter for Use of FSS Contracts** Revised 1/2005

#### **CONTRACTOR AUTHORIZATION LETTER FOR USE OF FSS CONTRACTS**

*Contractor Name*

*Address*

As a Government cost-reimbursement contractor under contract \_\_\_\_\_, you are hereby authorized to place orders under GSA's Federal Supply Schedule (FSS) Program, subject to the conditions listed below.

1. This authorization expires on \_\_\_\_\_.
2. Purchases made under this authorization are limited to \$\_\_\_\_\_.
3. This authorization is limited to the following FSS contract(s) \_\_\_\_\_.
4. This authorization (*does/does not*) apply to overhead supplies, and (*does/does not*) apply to production supplies.
5. This authorization is limited to the following facility (*insert contractor facility name and location*).



6. Vesting of title for supplies purchased under this authorization shall be as follows (*insert vesting information*).

7. (*Other limitations may be inserted here*) Any supplies or services purchased under this authorization must be properly accounted for and properly used. You are authorized to order only those supplies and services required in the performance of your contract(s) referred to above. You are responsible for compliance with the applicable policies and procedures prescribed for purchases from FSS contracts.

*Contracting Officer*

## **2 FAA Procedures for Vending Facility Operations Under Randolph-Sheppard**

**Revised 7/2013**

1. GENERAL. The Randolph-Sheppard Act, and Department of Education Regulations implementing the act and amendments, gives the blind priority in operating vending facilities.

2. RESPONSIBILITY. The Chief of the Contracting Office (COCO), or their designated representative, administers FAA's vending facility program.

3. PRIORITIES. Blind vendors licensed by State licensing agencies designated by the Secretary of Education under the provisions of the Randolph-Sheppard Act must have priority pursuant to 34 CFR 395 in the location and operation of food service and/or automated vending facilities, on property occupied and controlled by FAA. Because contracts/permits for food service and/or automated vending facilities do not involve the expenditure of appropriated funds, no further set aside requirements apply.

### **4. CRITERIA FOR ESTABLISHING NEW CAFETERIAS AND OTHER TYPES OF VENDING ESTABLISHMENTS.**

a. The FAA must first determine if a facility is subject to the Randolph-Sheppard Act provisions (see paragraph 13 through 16). If not, the following factors should be considered in determining feasibility of relying on nearby food establishments in lieu of establishing vending facilities on FAA-controlled and occupied property:

(1) Accessibility. Food establishments must be conveniently located so that employees can reach them, obtain service, and return to duty within the time allowed for that purpose.

(2) Suitability. To be acceptable, good quality service must be available at reasonably competitive prices, in clean, neat surroundings.

(3) Adequacy. The nearby food establishments must be able to serve FAA employees and their other patrons during required service hours, with reasonable promptness.

b. If it is not feasible to depend on nearby food establishments, FAA may establish a vending facility if the following prerequisites are met and documented in writing:

(1) Justification. There must be adequate justification for establishing a vending facility as set forth in this paragraph.

(2) Space. Sufficient and satisfactory space must be available.

(3) Funding. Sufficient funds must be available to FAA to defray the costs for which the Government will be responsible.

(4) Necessity. The services must be necessary for the health or efficiency of FAA employees while on duty.

(5) Codes. It must be possible to establish and operate each vending facility conforming with safety, health, and sanitary codes.

5. FOOD SERVICE EQUIPMENT. Generally, FAA may furnish, install and connect all original food service equipment of fixed or substantially permanent nature, except vending machines operated under the provisions of the Randolph-Sheppard Act. If a facility is accepted by the State Licensing Agency (SLA) under the Randolph-Sheppard Act, then the SLA is required to provide the food service equipment. Other food service equipment, including cash registers, should be provided by the concessionaire. Consult with FAA legal counsel's office regarding any vested title to equipment.

#### 6. SPACE RENTAL FEES AND UTILITY CHARGES.

a. Blind vendors will not be charged for Government space. Utilities and other support services may be provided without charge.

b. Employee welfare and recreation associations, commercial cafeteria operators, and/or commercial vending machine operators should be assessed charges for space at a rate equivalent to commercial rents for comparable property and services. Utility charges should be assessed, based either on separate metering or appropriate proration by space occupied or by other acceptable methods for prorations.

c. Space rental and/or utility charges may be waived or reduced upon written determination by the Contracting Officer that uninterrupted operation of the vending facility is essential to the efficiency of operations of the activity and a significant factor in hiring and retaining employees and promoting employee morale.

7. TERM OF CONTRACT. (This paragraph does not apply to permits issued to SLAs for the blind under the Randolph-Sheppard Act).

a. There is no statutory limitation for the term of a cafeteria contract in non-GSA activities. However, each contract will establish a definite period beyond which the contract and extensions will not be allowed to run.

b. The contract may permit termination by either of the contracting parties, without cause, after 90 days written notice to allow the parties ample time in which to prepare for the transition necessitated by termination.

8. BONDS. At the discretion of the Contracting Officer and if required by the solicitation, the operator may be required to furnish a performance bond to guarantee the faithful performance of his obligations under the contract. The performance bond, if required, will be of an amount determined by the Contracting Officer to be adequate to protect the Government's interest and will be furnished prior to commencement of operations of the facilities.

9. INSURANCE. All contracts will include the clause for contractor liability insurance.

10. HOURS OF SERVICE. Hours will be determined on a case-by-case basis by the Contracting Officer and the appropriate facility manager.

11. MONETARY RECEIPTS. Monies received by the Government from operators for space, utilities, and other services will be deposited into the U. S. Treasury as miscellaneous receipts, via the servicing Accounting Division.

12. AUDIT. The Contracting Officer should arrange periodic spot reviews and audits during the term of agreement.

13. JUSTIFICATION FOR EXEMPTION FROM BLIND VENDORS OPERATING FACILITIES. Facilities are subject to the exemptions stipulated in paragraph 16 (Exemption).

a. Blind persons licensed by a SLA for the blind will be given priority in the operation of vending facilities, including cafeterias, on FAA-controlled property.

b. When the location and/or operation of a blind vending facility would adversely affect the interests of the United States, a complete, written justification will be furnished to the Secretary of Education, who will make the final determination. Each determination will be a matter of public record by publication in the Federal Register.

c. The regulations governing this program (34 CFR Part 395) do not define "adversely affect the interests of the United States," because the Statute requires a case-by-case determination. If a regional or center director believes that the establishment of a blind vending facility would adversely affect the interests of the United States, he/she will make a written finding to that effect, with concurrence of regional or center legal counsel, and be addressed to the Secretary of Education.

14. ACQUISITION AND OCCUPATION OF FEDERAL PROPERTY. Any FAA acquired (purchased, rented, or leased), constructed, or substantially altered or renovated building is required to have one or more satisfactory sites for a blind-operated vending facility.

a. Substantial alteration or renovation is considered to be a permanent material change in the floor area of a building that would render it appropriate for the location and operation of a vending facility by a blind vendor.

b. "Satisfactory site" means an area fully accessible to vending facility patrons which has:

(1) A minimum of 250 square feet available for the vending and storage articles necessary for the operation of a vending facility; and

(2) Sufficient electrical, plumbing, heating, and ventilation outlets for the location and operation of vending facilities in accordance with applicable health laws and building codes.

15. OFFERING TO STATE LICENSING AGENCIES (SLA).

a. A service area, region or center will notify the appropriate SLA of buildings to be acquired or substantially altered or renovated. This notice (see Figure 2-2, for example notice) should be by certified or registered mail with return receipt requested. This notification will be provided at least 60 days in advance of the intended acquisition date or the initiation of actual construction, alteration, or renovation. As a practical matter, the SLA should be contacted early in the planning or design stage of a project. The notice will enable the SLA to determine if it wants a vending facility in the building and will:

(1) Indicate that a satisfactory site or sites for the location and operation of a blind vending facility is included in the plans for the building;

(2) Forward a copy of a single line drawing indicating the proposed location of such site or sites, and

(3) Assure the SLA that, subject to the approval of the FAA, it will be offered the opportunity to select the location and type of vending facility to be operated by a blind vendor prior to completion of the final space layout of the building.

b. Responsibility for notification rests with the COCO who will be the designated contact point for the SLA. A copy of the notice and response, if any, will be provided to the Division for Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20202.

c. The SLA will be given the opportunity to visit the proposed vending facility site prior to preparation of the final space layout.

d. The SLA must respond within 30-days, acknowledging receipt of the notice from the FAA service area, region or center, and indicating whether it is interested in establishing a vending

facility, and if interested, indicating its agreement or alternate selection of location and its selection of type of vending facility.

e. If no response is received within the 30-day period, the FAA service area, region or center will notify the Secretary of Education at the address in (b) above that the State licensing agency's failure to respond has been construed as a determination by the SLA that the number of persons using the property is or will be insufficient to support a vending facility and that a satisfactory site to be operated under the auspices of the SLA will not be incorporated, unless directed by the Secretary of Education. This notification will also be provided if the SLA responds and affirmatively indicates that it has made such a determination.

#### 16. EXEMPTION.

a. The Secretary of Education has determined that the requirement to provide a satisfactory site, as stated in paragraph 15(a)(1) above, does not apply:

(1) When fewer than 100 Federal employees will be located in the building during normal working hours; or

(2) When a building in which services are to be provided to the general public contains less than 15,000 square feet to be used for Federal Government purposes; or

(3) When a service area, region or center is leasing all or part of a privately owned building in which the lessor or any of its tenants have an existing restaurant or other food facility in a part of the building not covered by the lease and operation of a vending facility would be in substantially direct competition with such restaurant or other food operation; or

(4) When the SLA and the Secretary of Education determine that the number of persons using the Federal property is or will be insufficient to support a vending facility; or

(5) When there is an existing vending facility on the Federal property that is not covered by contract with, or by permits issued to SLAs. However, the SLA must be notified of the expiration of the existing contract or permit.

#### 17. COLLECTION AND DISTRIBUTION OF VENDING MACHINE INCOME FROM VENDING MACHINES ON FEDERAL PROPERTY.

a. Definitions. The following terms, as defined in 34 CFR 395.1, are unique to this program and require special attention.

(1) Vending machine. For the purpose of assigning vending machine income, a vending machine is a coin (or currency) operated machine which dispenses those articles and services that are sold in blind-operated vending facilities. The machine operated by the United States Postal Service for selling postage stamps or other postal products and services, machines providing services of a recreational nature, and telephones will not be considered vending machines.

NOTE: The income from copy machines is to be made available for distribution to blind vendors in those cases where in the past such machines have been available within vending facilities operated by blind vendors.

(2) Vending machine income means receipts remaining to vending machine operators after deducting either:

(a) All applicable costs incurred (costs of goods, service maintenance, repair, cleaning, depreciation, supervisory and administrative personnel, normal accounting, accounting for income sharing and so forth); or

(b) Monies paid to the FAA or an employee welfare and recreation association by a commercial vending firm.

This definition applies to machines operated, serviced, or maintained on Federal property by, or with the approval of the FAA. It also applies to a commercial vending concern which operates, services, and maintains vending machines on FAA property for, or with the approval of the FAA. Receipts do not include a blind vendor's receipts. Commissions paid do not include those paid to a blind vendor.

(3) Direct competition means the presence and operation of a vending machine or a vending facility on the same premises as a vending facility operated by a blind vendor. Vending machines or vending facilities operated in areas where the majority of the employees normally do not have direct access (in terms of interrupted ease of approach and the amount of time required to patronize the vending facility) to the vending facility operated by a blind vendor shall not be considered in direct competition with that vending facility.

(4) Normal working hours means an eight-hour work period between the hours (approximately) of 8:00 a.m. - 6:00 p.m., Monday through Friday.

(5) Individual location, installation or facility means a single building or a self-contained group of buildings. A self-contained group of buildings is two or more buildings in close proximity to each other between which a majority of Federal employees working in the buildings regularly move from one building to another in the normal course of their official business during a normal working day.

#### b. Mandatory Distribution Requirements.

(1) Pursuant to 34 CFR 395.32, vending machine income, from vending machines on FAA-controlled property is required to be distributed to SLA. Distribution is made according to a formula which distinguishes situations in which the vending machine is in direct competition with a vending facility operated by a blind vendor from one that does not exist, the distribution formula further distinguishes between buildings which are open only during normal work hours from those which are open during non-normal work hours.

(2) Summary of distribution formula:

(a) One hundred percent of the vending machine income from a vending machine in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(b) Fifty percent of the vending machine income from vending machines not in "direct competition" with blind-operated vending facilities will be disbursed to the appropriate SLA.

(c) Thirty percent of the vending machine income from vending machines, not in "direct competition" with blind-operated vending facilities and located in a building where at least 50 percent of the total work hours worked on the premises occurs during other than normal working hours," will be disbursed to the appropriate SLA.

c. Exemptions.

(1) The mandatory distribution requirements do not apply if vending machines are not in "direct competition" with a blind vending facility, and the total vending machine income from all such machines at any "individual location, installation, or facility" does not exceed \$3,000.00 annually.

(2) The mandatory distribution requirements do not apply to existing arrangements under which the SLA receives a percentage of vending machine commissions less than that specified above, so long as the arrangement is covered by a contract with a specified expiration date, and upon expiration the contract is renegotiated according to the distribution formula.

(3) All arrangements pertaining to the operation of vending machines on Federal property not covered by contract with, or by permits issued to, SLA agencies shall be renegotiated upon expiration of the existing contract or other arrangement to conform with the requirements of this guidance.

d. Responsibility. The COCO, or their designated representative, will be responsible for:

(1) Assuring that vending machine income is collected and accounted for. Under no circumstances, will the FAA become involved in the actual physical collection of vending machine income.

(2) Assuring that vending machine income is disbursed by the operator to the SLA quarterly on a calendar year basis. The operator must provide the COCO, or their designated representative, with a quarterly certified statement showing that such action has been taken. The first payment of income shall be made at the end of the first full quarter following the effective date of this directive.

(3) Determining, subject to the approval of the regional or center director, when a vending machine is in "direct competition" with a blind vending facility. A determination that a vending machine is not in "direct competition" with a blind vending facility shall be also subject to concurrence of the SLA. In the event of a disagreement between the FAA service area, region or

center and the SLA in the determination of whether a situation of direct competition exists, the disagreement should be resolved informally through negotiations between the FAA service area, region or center and the SLA. If the negotiations do not resolve the disagreement, the matter would be appropriate for submittal to arbitration.

#### 18. APPLICATION FOR SLA PERMIT. (See paragraph 20(a) for definition of Cafeteria)

a. This paragraph prescribes procedures for submission, review, and approval of permits for the establishment of vending facilities, other than cafeterias, on FAA-controlled property. The provisions of this paragraph and 34 CFR 395.35 will be complied with in establishing a vending facility.

b. Authorization. In accordance with 34 CFR 395.34, the SLA will submit the Department of Education form, Application and Permit for the Establishment of a Vending Facility on Federal and Other Property (see Figure 2-3), for review and approval by the COCO, or their designated representative.

c. Review of the permit. Upon receipt of a permit, COCO, or their designated representative, will:

(1) Discuss all details of the permit with the SLA in order to develop a full and clear understanding of the type of facility proposed, the nature of the items to be sold, provisions for fixtures and equipment, the hours of operation, and etc.

(2) Compare the type of facility to be provided, and types of articles and services to be sold with the requirements as determined by FAA. Any discrepancies should be discussed and resolved with the SLA.

(3) Ensure that no new vending facility exists in their space without a permit in place.

(4) Require ATO Technical Operations (ATO-W) engineers developing or substantially changing a large staffed facility (such as ATCT, ARTCC, etc.) and/or facility managers to submit written requests for establishment of new vending facilities to the COCO for approval. The COCO would make determination for Randolph-Sheppard applicability, and approve or deny establishment of a vending facility based on the criteria provided. See the Randolph-Sheppard Act for the difference between cafeteria and snack bar as provided by this statute.

(5) Add the following clause to the permit if the SLA requests approval to prepare and sell brewed coffee and/or food items:

"Approval for the preparation and serving of brewed coffee and/or food items is subject to certification by the State licensing agency that the blind vendor is capable of performing these tasks in a safe and sanitary manner, in accordance with all applicable health, sanitation and building codes or ordinances, or that a sighted assistant will be employed to perform these tasks."



## 19. TERMS OF THE PERMIT.

a. The permit will be issued in the name of the applicant SLA.

b. The permit will be issued for an indefinite period of time, subject to suspension or termination if either party does not comply with any of the terms and conditions of the permit.

c. The permit will provide that:

(1) No charge will be made by the FAA to the SLA for normal maintenance and repair of the building, or for cleaning areas adjacent to the designated vending facility boundaries, or for trash removal from a designated collection point.

(2) The SLA will be responsible for cleaning and maintaining the appearance of and for the security of the vending facility within the designated boundaries of such facility and for all costs of every kind in conjunction with vending facility equipment, merchandise and other products to be sold except as provided in (5) below. SLA will be liable for the loss of, or damage to, property of the U. S. Government when such loss or damage is caused by the acts or omissions of SLA, the blind vendor or the employees or agents of the blind vendor. The SLA will also be responsible for the acts or omissions of the blind vendor, his employee or agents.

(3) Articles sold at such vending facilities may consist of newspapers, periodicals, publications, confections, tobacco products, foods, nonalcoholic beverages, or other articles or services which are determined by the SLA, in consultation with the COCO, or their designated representative, to be suitable for a particular location.

(4) Vending facilities will be operated in accordance with applicable health, sanitation and building codes, ordinances and regulations.

(5) Installation, modification, relocation, removal, and renovation of vending facilities will be subject to the prior approval of the COCO, or their designated representative, and the SLA. Costs of installation, modification, removal, relocation or renovation will be paid by the initiating party. In any case of suspension or termination for noncompliance by either party, the costs of removal from the building will be paid by the non-complying party.

(6) The permit to the SLA will also contain, if applicable, appropriate requirements for reimbursement or direct payment for support services such as utilities and telephone service.

d. If the blind licensee fails to provide satisfactory service or otherwise fails, to comply with the requirements of the permit issued to the SLA, the COCO, or their designated representative, will coordinate with legal counsel and then notify the SLA of the deficiency in writing and request corrective action within a specified reasonable time. The notice will indicate that failure to correct the deficiency will result in temporary suspension or termination of the permit, as appropriate. Any actual suspension or termination action will not be taken without prior coordination with Region or Center legal counsel.

e. FAA and SLA may terminate the permit by mutual agreement after providing ninety (90) day notice to the other party of the intended termination, including the reason therefor and supporting documentation.

f. Upon approval of the permit by the COCO, or their designated representative, two copies of the approved permit must be forwarded to the SLA. The original permit will be retained in the region or center.

## 20. OPERATION OF CAFETERIAS BY BLIND VENDORS.

a. Definition. "Cafeteria" means a food dispensing facility capable of providing a broad variety of prepared foods and beverages (including hot meals) primarily through the use of a line where the customer serves himself from displayed selections. A cafeteria may be fully automatic or some limited waiter or waitress service may be available and provided within a cafeteria. Table or booth seating facilities are always provided.

b. Priority afforded blind vendors. A priority will be afforded blind vendors in operated cafeterias. This priority may be afforded by the following methods pursuant to 34 CFR 395.33.

(1) FAA may initially decide to competitively negotiate the cafeteria contract and invite the SLA to respond to the solicitation. The SLA's proposal will be evaluated in the same manner as that of all other offerors. If the proposal is likely to be considered for award by the Contracting Officer, the Secretary of Education will be consulted as required by 34 CFR 395.33 (a) to determine whether award to the SLA is proper.

(2) The Contracting Officer may award to other than the SLA when the FAA believes that award to the SLA would adversely affect the interests of the United States and the Secretary of Education has agreed and issued a final determination to that effect. The Contracting Officer may also award to other than the SLA if the Regional Administrator or Center Director determines and the Secretary of Education agrees that the blind vendor does not have the capacity to operate a cafeteria in such a manner as to provide food service at a comparable cost and of comparable high quality as that available from other providers of cafeteria services.

(3) If the SLA submits a proposal and it is not likely to be considered for award by the Contracting Officer, award may be made to another offeror following normal best value acquisition procurement procedures, but only after consultations between the COCO, or their designated representative, and Region or Center legal counsel.

(4) FAA service areas, regions and centers may enter into direct negotiations with the SLA to determine whether the SLA is capable of operating the cafeteria in a manner comparable to operation by a commercial food service operator. If it is determined that the SLA has the capability and can operate the cafeteria at a reasonable cost with food of high quality, a contract will be awarded to the solicitation. If the negotiations do not result in a contract awarded to the SLA, the cafeteria contract will be placed by competitively negotiation and the SLA will be invited to respond to the solicitation. Direct negotiations with the SLA should be conducted at an

early stage so that the cafeteria contract can be competitively negotiated and awarded in a timely manner if negotiations with the SLA fail.

c. Terms of contract.

(1) The operation of a cafeteria by a blind vendor will be covered by a contractual agreement and not by a permit.

(2) The SLA will be expected to perform under contractual arrangements, applicable to commercial cafeteria operators. These may include, but are not limited to, the following:

(a) Submission of detailed quarterly income statements (see Figure 2-1).

(b) Provision of all necessary supplemental cafeteria equipment and utensils.

(c) Performance of preventive maintenance on all Government-owned equipment.

(d) Compliance with all applicable health, sanitation, and building codes or ordinances.

(3) Termination actions will not be taken without prior coordination with regional or center legal counsel.

(4) All contracts for the operation of cafeterias on FAA-controlled property with other than SLA's will, upon expiration, be processed under section 13, unless the State licensing agency informs the FAA that it is not prepared to exercise its priority at that time.

## 21. ARBITRATION OF STATE LICENSING AGENCY COMPLAINTS.

a. If the SLA alleges that the FAA is in violation of the Randolph-Sheppard Act as amended or Department of Education regulations, and the matter cannot be resolved informally, the SLA may file a complaint with the Secretary of Education to seek arbitration of the matter. The procedures for administering SLA complaints and conducting arbitration hearings will be pursuant to 34 CFR 395.37 and the Department of Education "Revised Interim Policies and Procedures for Convening and Conducting an Arbitration pursuant to Sections 5 (b) and 6 of the Randolph-Sheppard Act as Amended.

b. When it has been determined that an arbitration panel will be convened, unless directed otherwise, the appropriate regional or center director will appoint one FAA employee to serve as a panel member. In addition, a regional or center attorney will represent the FAA before the panel.

c. The Secretary of Education will pay all reasonable costs of arbitration.

## 22. EMPLOYEE WELFARE AND RECREATION ASSOCIATIONS.

**AUTHORITY.** The FAA may negotiate a vending facility agreement solely with an employee welfare and recreational association if: (a) the SLA is not interested in establishing a vending facility, (b) there are no acceptable SEDB firms available to perform the services, and (c) after solicitation of commercial concerns which might be interested in the vending facility, all proposals received are unacceptable and not susceptible to upgrading through further negotiations.

**23. DETERMINATION AND FINDING.** A written determination which justifies negotiations with an employee welfare and recreation association by the Contracting Officer must be approved by the COCO, or their designated representative, and placed in the contract file.

**24. PREREQUISITES.** Negotiations with an employee association will be based upon the following prerequisites:

a. The association must conduct a continuing, self-supporting operation with sales prices within the means of the employees at the facility.

b. See paragraph 6b for the FAA policy concerning space rental and utility charges to be assessed employee welfare and recreation associations.

c. Prior to commencement of negotiation with an employee association, the association will furnish the Contracting Officer a copy of its constitution and bylaws.

d. Any services rendered by the officers or members of the association in connection with the vending facility operation will be without remuneration of any kind.

e. Vending machine income will be distributed to the SLA in accordance with the criteria set forth in Paragraph 17.

f. Any remaining income derived from the vending facility operation will be used for the benefit of the employee association's welfare activities.

g. An agreement will be entered into between the association and the Contracting Officer, which provides for all of the aforementioned prerequisites and contains a commitment from the employee association that it will comply with the applicable provisions of this guidance. The agreement should be in format acceptable to both parties and concurred with by Government counsel prior to submission to the association and prior to execution by the Government.

**25. TYPES OF CONTRACT** (see Figure 2-4, Sample Contract).

a. Contracts may be of the following types, dependent on the nature of the operation and what is in the best interest of the Government.

(1) Percentage of gross receipts. This type of contract provides that revenues to the Government will be computed at a fixed percentage of the operator's gross receipts received during a specified period of time. It may also provide for a price adjustment clause to be included which provides

that revenues to the Government will be computed at predetermined percentages (upward or downward) for various levels of gross revenues received during a specified period of time.

(2) Fixed sums of money per month or other specified period. This type of contract provides for a reasonable fixed sum for depreciation of Government-owned equipment and charges for building services such as space rental, utilities and cleaning in the vending facility area.

(3) A combination of (1) and (2) above.

b. Contracting Officers, if circumstances so warrant, may utilize other methods of determining return to the Government, provided that the method is fair and reasonable.

c. The factual basis for determining the return to the Government will be included in the contract file.

d. The type of contract contemplated will be clearly set forth in the solicitation which will not, however, bind the Government absolutely to that contract type.

e. Revocable permits may be used for the operation of vending facilities other than cafeterias. The permit will set forth:

(1) Location;

(2) Amount of space necessary for the operation of the vending facility;

(3) Type of facility and equipment; and

(4) Number, location and type of vending machines and other terms and conditions to be included in the permit

## 26. REQUEST FOR OFFERS.

a. Requests for offers will contain all information necessary to enable a prospective offeror to prepare his proposal. The following elements should be included:

(1) Location and type of facility, including types and number of vending machines required. Specify the items permitted to be sold in the vending machines.

(2) Days and hours of service.

(3) Estimated average number of persons to be employed on each shift.

(4) Terms of contract, including any options.

(5) Description of operational and storage space available for the operation, including ingress and egress restrictions and security requirements, include applicable drawings.

- (6) Scope of proposed activity, standards of quality to be expected, pricing policies, and minimum menu requirements.
  - (7) Statement of condition of premises, scope of utilities to be provided by the FAA, listing of Government and operator furnished equipment.
  - (8) Manner and types of payments required by the Government, bonding and insurance requirements, if any, and accounting statements required to be submitted to the Government.
  - (9) Garbage disposal and cleaning requirements.
  - (10) Statement that the contractor must comply with all applicable health, sanitation and building codes of ordinances.
  - (11) Gross receipts from the activity for the current and past 3 years, and
  - (12) Any other information deemed necessary by the Contracting Office to assure complete understanding of requirements.
- b. Factors other than price that will be given consideration in evaluation proposals will be included in the SIR.
- c. The following is a suggested list of evaluation criteria which may be used:
- (1) Understanding of requirements.
  - (2) Approach to performance of contract
  - (3) Management.
  - (4) Experience in providing food services at offices or industrial building comparable to those described in the proposed contract.
  - (5) Past compliance with all applicable health, sanitation and building codes or ordinances.
  - (6) Level of proposed staffing, including manager and supervisors.
  - (7) Menu pricing, portion sizes and variety based on cyclical menus.
  - (8) Adequacy of accounting and inventory systems and procedures.

Figure 2-1. INCOME STATEMENT

PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_  
DATE DATE

SALES

Food

Vending Machines

TOTAL INCOME FROM SALES

COST OF GOODS SOLD

Inventory

Purchases

Total

Inventory

TOTAL COST OF GOODS SOLD

GROSS PROFIT

Less: OVERHEAD

Accounting & Legal

Depreciation

Interest & Penalties

Laundry

Miscellaneous

Payroll Taxes

Other Taxes- Unempl.Tax

Sales Tax

Repair & Maintenance

Rent

Salaries

Supplies - Office

Cleaning

Kitchen

Telephone

TOTAL OVERHEAD

NET INCOME, (LOSS) FROM OPERATIONS

Less: Bad Debt

NET INCOME, (LOSS)

Payments shall be mailed in accordance with the provisions of the contract

Amount Due Federal Aviation Administration Paid by Check No. \_\_\_\_\_ in the amount of

\_\_\_\_\_

Figure 2-2. NOTICE OF THE FEDERAL AVIATION ADMINISTRATION'S

INTENTION TO ACQUIRE OR OTHERWISE OCCUPY A BUILDING

NOTICE NO. \_\_\_\_\_ DATE \_\_\_\_\_

This is to inform you that not less than 60 days from the date hereof, the Federal Aviation Administration, \_\_\_\_\_ (address) \_\_\_\_\_ intends to acquire or otherwise occupy \_\_\_\_\_ square feet of space in which \_\_\_\_\_ Federal Government employees are or will be located during normal working hours, in \_\_\_\_\_.

(If this is a lease action, just insert city and state.)

Accordingly, as provided by the Randolph-Sheppard Act (20 USC 107 et. seq.) and regulations issued pursuant thereto, notice is hereby given that a satisfactory site or sites for the location and operation of a vending facility by a blind vendor is included in the plans for the building to be acquired or otherwise occupied. Receipt of this notice will be acknowledged in writing promptly but no later than within 30 days from the date of receipt. Indication will be made at that time whether you are interested in establishing a vending facility. We assure you that, in the event we receive written advice of your interest in establishing a vending facility, you will be afforded the opportunity to determine the suitability of the proposed site or sites. We further assure you that, subject to the approval of this agency, you will be given the opportunity to select the location and type of vending facility to be operated by a blind vendor. An opportunity to make your determination and selection, as indicated above, will be offered to you prior to the completion of the final space layout but no later than date. Your prompt attention to this matter will be appreciated.

\_\_\_\_\_  
Signer's Name (Type or Print)

\_\_\_\_\_  
Signature

CHECK APPROPRIATE BOX

acquisition.

acquisition, because in our estimation, the operation would not be feasible. Therefore, we waive our priority right to a satisfactory site in this building pursuant to 34 CFR 395.31 (d).

Receipt of Notice No. is hereby acknowledged.



\_\_\_\_\_  
Approval Official (Type or Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title (Type or Print)

\_\_\_\_\_  
Date

Complete this form and return the Original to the Federal Aviation Administration, (regional or center address)

\_\_\_\_\_  
and one copy to the Division for the Blind and Visually Impaired, Rehabilitation Services Administration, Department of Education, Washington, DC 20201. Retain one copy for your records.

Figure 2-3. DEPARTMENT OF EDUCATION APPLICATION FOR PERMIT

DEPARTMENT OF EDUCATION OFFICE OF SPECIAL EDUCATION AND  
REHABILITATIVE SERVICES

WASHINGTON, DC

APPLICATION AND PERMIT FOR THE ESTABLISHMENT OF A VENDING FACILITY  
ON FEDERAL AND OTHER PROPERTY AS AUTHORIZED BY P.L. 74-732, AS  
AMENDED BY P.L. 83-565 AND TITLE II OF P.L. 93-516 (RANDOLPH-SHEPPARD ACT)

The \_\_\_\_\_ (designated State Licensing Agency) of the State of \_\_\_\_\_ requests approval of \_\_\_\_\_ (Federal or other property Agency/Owner) to place a vending facility on the property located \_\_\_\_\_.

**SATISFACTORY SITE:** It has been determined that this location meets the criteria of a satisfactory site as defined in 34 CFR 395.1 (q).

**TYPE, LOCATION AND SIZE OF FACILITY:** Type of facility: \_\_\_\_\_

Facility location \_\_\_\_\_. The facility will operate days of the week from \_\_\_\_\_ a.m. to \_\_\_\_\_ p.m. commencing on \_\_\_\_\_.

**MACHINE INCOME SHARING:** Both parties will comply with 34 CFR 395.35. This permit will be issued for an indefinite period of time subject to suspension or termination on the basis of noncompliance by either party with any of the agreed upon terms and conditions of the permit. By mutual agreement the State licensing agency and the FAA may terminate the permit after providing notice of the intended termination, including the reason therefore and supporting documentation to the other part. Both parties will comply with all regulations issued in Title VI

of the Civil Rights Act of 1964. Reason for denial of the application will be set forth in writing to the State.

---

Approving FAA Official

---

Approving Licensing Agency

---

Title

---

Date

---

Title

---

Date

Figure 2-4. SAMPLE CONTRACT.

1. GENERAL. The following clauses are suggested for use in vending facility contracts. It is intended that use of these suggested clauses will distinguish vending facility contracts, in which revenue accrues to the Government, from other contracting procedures which involve the expenditure of Government funds, while adhering to generally accepted business standards and practices.

2. DEFINITIONS.

a. The term "Secretary" means the Secretary of Transportation and the term "head of the agency" means the Administrator, Federal Aviation Administration. The term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

b. The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated contracting officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his written authority

c. The words "Contractor," and "Operator" will be considered to be synonymous, as are the words "contract and "agreement."

d. "Operating Facilities" means furniture, furnishings, special lighting fixtures, draperies, decorations, decorating or other special finishing work, signs, appliances, and trade fixtures, etc., furnished and installed or used by the Operator in its operations at the facility.

e. "Gross Receipts" means the total amount received, realized by or accruing to the Operator from all sales, for cash or credit, of services, materials or other merchandise, made pursuant to the privileges authorized by this contract rendered at or from the of determination of the amount due the Operator for each transaction, whether for cash or credit, and not at the time of billing or payment, unless otherwise specifically stated in this contract; provided, however, that any taxes

imposed by law which are separately stated and paid by the customer, and directly payable to the taxing authority by the Operator, will be excluded from gross receipts.

3. **ASSIGNMENT.** No sublease, transfer, subcontract, or assignment of any part hereof or interest herein, directly or indirectly voluntarily or involuntarily, will be made by the Operator of this contract, unless such sublease, transfer, subcontract or assignment is first approved in writing by the Contracting Officer and is subject to whatever limitations the Government may wish to apply; provided, however, that the Operator may, if specified elsewhere in this contract, install or use equipment or other operating facilities which are owned by others and leased to the Operator for its use under this contract.

4. **GOVERNMENT-OPERATOR RELATIONSHIP.** Nothing in this contract will be construed as in any way creating or establishing a partnership relationship between the parties hereto or as constituting the Operator as an agent or representative of the Government for any purpose or in any manner whatsoever.

5. **FEDERAL, STATE, AND LOCAL LAW.** The Operator will, at its own cost and expense: (a) comply with all Federal, State and local laws, including but not limited to county and local ordinances, rules or regulations now or hereafter in force, which are applicable to the operation of its vending facility; (b) obtain and pay for all necessary licenses and permits; (c) pay all fees and charges assessed under Federal, State and local law insofar as they are applicable to its vending facility.

#### 6. **TERMINATION.**

a. Either party may terminate this contract without cause by giving the other party written notice of its intention to do so. Other than a termination by the government in the interests of the National Defense, any such notice of termination will be given at least ninety (90) days in advance of the effective date of termination.

b. The Contracting Officer may, by written notice to the Operator, terminate this contract. in whole or in part, for default upon the happening of any of the following events:

(1) Filing by, or the final adjudication against, the Operator of any petition in bankruptcy, or the making of any transfer or assignment for the benefit of creditors, which transfer or assignment has not been authorized previously by the Government.

(2) The abandonment of the vending facility or discontinuance thereof Should this occur, the Government will not be responsible for the protection of the Operator's merchandise, fixtures, supplies or equipment, and may remove same from the premises for storage or disposal.

(3) The failure of the Operator to perform or observe any of the terms, covenants or conditions of the contract, after the expiration of any period of warning or notice given by the Contracting Officer to the operator concerning such failure.

c. The Government's termination of this contract for default will be deemed to be a decision of the Contracting Officer as to a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

d. In the event this contract is terminated for default, the Government may retain as liquidated damages any monies which have been prepaid or advanced to the Government, based on occupancy to the end of the contract period.

e. In the event of termination in accordance with paragraph a. clause 5, the Operator will be entitled to have any monies that have been prepaid or advanced to the Government based on occupancy of the premises to the end of the contract period refunded to it by the Government.

f. If after notice of termination for default of this contract under this Clause, it is determined for any reason that the Operator was not at fault under this Clause, or that the default was excusable under this clause, the termination will be deemed to have been properly effected pursuant to paragraph a. of his Clause.

7. **WAIVER OF PERFORMANCE.** The failure of the Government to insist in any one or more instances upon a strict performance by the Operator of any of the terms of this contract will not be construed as a waiver or relinquishment thereof for the future, but rather, said terms will continue and remain in full force and effect. No waiver by the Government of any terms hereof will be deemed to have been made in any instance unless specifically expressed in writing as an amendment to this contract.

8. **WORK STOPPAGE OR STRIKE.** Except as a result of damage to or destruction of the premises by fire or other casualty, in the event operation of the Operator are curtailed, interrupted, or otherwise handicapped in whole or in part for any reason, including but not limited to strikes and labor disputes, such conditions will not relieve the Operator of its obligation to pay the revenue specified in this contract nor to pay for utilities consumed under such conditions, unless and except as otherwise specifically provided for elsewhere in this contract.

9. **FAIR LABOR STANDARDS ACT.** (Public Law 93A259, enacted April 8, 1974, amends the Fair Labor Standards Act of 1937, as amended (29 U.S.C. 201 et seq.)) The administration and enforcement of this Act are the responsibility of the U. S. Department of Labor; any questions as to the requirements of the Act or its applicability to the work required by this contract should be addressed to the Administrator, Wage and Hour Division, U. S. Department of Labor, Washington, DC. 20210 or to a Labor Department Regional Office.

10. **SECURITY.** The Operator and each of his employee engaged in work under this contract will execute and submit to the Federal Aviation Administration a Standard Form FDA258, (3 copies), and Standard Form 86, (1 copy). The executed forms will be furnished to the Contracting Officer's Representative (COR) not later than the first day Operator's employees report to the facility to perform services under this contract. Personnel of the Operator will not be allowed to perform services under this contract until the Contracting Officer has received the appropriate forms. The necessary forms will be furnished to the Operator by the COR.

Personnel of the Operator who have previously submitted Standard Forms 86 and FDA258 for work under other: Federal Aviation Administration contracts need not submit new forms if they have been continuously employed at the same FAA facility since the original submission of the forms.

All personnel of the Operator, who are cleared for security purposes will be allowed to continue to perform work under the contract; any individual who is not so cleared may not be employed by the Operator under this contract.

11. FACILITY RULES AND REGULATIONS. The Operator will observe and obey all rules, regulations, and implementations thereof promulgated as authorized by law for the care, operation, maintenance and protection of the facility, which rules, regulations and implementations thereof would be applicable and valid irrespective of this clause. Failure of the Operator, any of those persons under its control or its subcontractors to observe such rules, regulations or implementations will, in addition to assessment of any other penalty provided by law, because for termination of this contract for default.

#### 12. RESTRICTIONS.

a. Unless specifically authorized in writing by the Contracting Officer, the Operator will not remove any Government-owned equipment from premises, advertise the concession operations in any manner, or prepare foods and beverages on the premises for sale at any location not covered by the contract.

b. Since the facilities to be provided hereunder are for the benefit and convenience of Federal employees, patronage from other sources that interfere with such purposes may be limited or prohibited by the Government at its sole discretion.

13. PROMOTION. The Operator agrees to use its best efforts in every proper manner to maintain and develop the business conducted by it under this contract, to increase same, and not to divert or cause or allow any business to be diverted from the facility.

#### 14. SANITATION.

a. All cafeteria operating under the contract will be conducted in conformance with the requirements for a Grade A food establishment, as set forth in the Food Service Sanitation Manual No. FDA-78-2081, of the Food and Drug Administration (GPO Stock No. 017-012-00267-6) (or revision thereof), or in conformance with local requirements for a top-grade establishment, if the latter should be more stringent, provided, however, that the Operator will not be responsible for any structural deficiencies in the facility which are the responsibility of the Government.

b. Each food handler will be required to pass a medical examination annually or as may be required by applicable local regulations, whichever requirement is more stringent, to determine that he has no communicable disease. Those found to be or suspected of suffering from a communicable disease will be removed from duty immediately.

c. Food handlers will not be permitted to operate the cash register or handle money nor will any person operating the cash register or handling money be permitted to handle food.

## 15. INSPECTIONS

a. Health. The facility operated under the contract may be inspected periodically by the Contracting Officer, representatives of local health departments, or the Regional Flight Surgeon. After each inspection, the Operator will be advised of any unsatisfactory conditions for which he is responsible. Deficiencies reported will be corrected promptly by the Operator.

b. Fire Prevention. Periodic inspections will be performed by a FAA-appointed fire inspector; any unsafe conditions found by such official will be immediately corrected by the Operator.

c. Industrial Safety. Periodic inspections will be performed by an FAA-appointed Safety Officer; and any unsafe conditions found by such official will be immediately corrected by the operator

## 16. ESTABLISHMENT AND CONTROL OF PRICES AND SERVICES.

a. The Contracting Officer reserves the right to control the nature, types, and quantities of merchandise and services which may be sold or furnished by the Operator. If the Operator refuses or fails within forty-eight (48) hours after receipt of written notice from the Contracting Officer to discontinue the sale of any product or service which the Contracting Officer determines to be in violation of the rights granted hereunder or which the Contract Officer determines should not be dispensed, or if the Contracting Officer is forced to make repeated and frequent demands upon the Operator to cease the sale of such products or services, such refusal, failure or demands will be cause for termination for default of this contract.

b. The Operator will maintain and operate the vending facility to such extent and in such manner as provided in the contract, sell the articles and services authorized, and provide the management, personnel, equipment, goods and commodities necessary therefore.

c. All rates and prices established by the Operator for goods or services sold hereunder will be reasonable and subject to approval by the Contracting Officer.

d. Reasonableness of prices will be judged primarily by comparison with those currently charged for comparable goods or services furnished or sold outside the facility under similar conditions, with due allowance for accessibility, hours and time of operation, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given other factors as the Contracting Officer may deem significant.

e. Only quality foods, such as Grade A poultry, U. S. Choice grades of beef U.S. No.1 grade pork, Grade A or fancy vegetables, and Grade A or B canned goods may be used. All foods served will be wholesome and free from spoilage and decay. Uncooked items, such as fresh fruits will be clean and free from blemish. Salads and sandwiches will be made fresh daily and

all foods, will, when served, be attractive in appearance at the proper temperature, and moist, dry, tender, etc., as appropriate.

f. Prices will be posted by the Operator, preferably adjacent to the item.

**17. RESPONSIBILITIES OF THE GOVERNMENT.** The Government will provide space for operation of the vending facility and such additional space as it may deem necessary including a reasonable use of existing elevators, corridors, passageways, driveways, and loading platforms. The Government will, as it deems necessary provide lighting, ventilation, and the utilities required for the operation of the vending facility. In addition, the Government will:

a. Make such improvements and alterations as it may deem necessary or desirable to prepare or recondition assigned space for its intended purpose, including improvements and alterations necessary to conform to applicable health and sanitary requirements.

b. Maintain and repair the following: (i) the building structure in areas assigned, for the Operator's use, including painting and redecoration; (ii) gas, water, steam, sewer, and electrical lines, ventilation, and existing air conditioning lines, all to the point of connection with food service equipment or to the point of outlet in vending facility areas if not so connected; (iii) electrical lighting fixtures (including relamping); space heating systems, floors and floor coverings (except rugs and carpets) and wall and ceiling; provided that Operator will bear the expense of all repairs necessary because of damage caused by the fault or negligence of the Operator or any of his employees.

**18. RESPONSIBILITIES OF TO OPERATOR.**

a. The Operator will provide prompt, efficient, and courteous service. He will obtain licenses and permits as required by State and local authorities, and will observe all applicable building, health, sanitary, and other regulations and laws. He will use reasonable care in the use of space and Government-owned equipment, and, upon contract termination, will yield up such space and equipment in the same condition as when received, except for ordinary wear and tear and damage or destruction beyond his control and not due to his fault or negligence.

b. The Operator will maintain an effective program for the extermination of rodents and vermin in areas assigned for his use. Although the Government will provide cleaning of the dining area floors and waxing of the floor as specified in the contract, the Operator will provide necessary intermittent cleaning of the dining area floors between the cleanings provided by the Government. All cleaning and mopping of the area behind the counter and all kitchen and storage areas, as specified herein, will be done by the Operator.

c. The Operator will employ sufficient and suitable personnel, secure and maintain insurance, and observe other contract requirements? all as more specifically set forth hereinafter. Except as otherwise stated herein, he will pay each and every fee, cost, or other charge incident to, or resulting from operations under the contract.

**19. EMPLOYEE OF OPERATOR.**

a. The Operator will employ a full-time qualified manager during the hours of \_\_\_\_\_ days a week. In addition, the Operator will employ \_\_\_\_\_ full-time working supervisors during each shift, \_\_\_\_\_ a day, and \_\_\_\_\_ days a week or a representative of the Operator at times other than those specified here. If the above supervisors, will visit the facility monthly for general supervisory purposes at times agreed upon by the Contracting Officer and the Operator. Upon 4~8 hours advance notice from the Contracting Officer a representative of executive status will visit the facilities to adjust matters requiring attention.

b. The Government may require the Operator to remove from the contract operations any employee who is considered incompetent, careless, insubordinate, unsuitable or otherwise objectionable or whose continued employment is considered contrary to the public interest by the Contracting Officer.

c. The operator will require its employee to wear a uniform and badge by which they may be known and distinguished as the employees of said Operator. Uniforms will be clean. Hairnets, headbands or caps must be used by employees engaged in the preparation and serving of food to keep hair from food contact surfaces. The Operator will provide his employees with frequent changes of uniforms to assure cleanliness.

d. The Operator will require its employees to observe a strict impartiality as to quantities and services and in all circumstances to exercise courtesy and considerations in dealing with vending facility patrons. Serving utensils will be used by the Operator's employees to keep direct handling of food to a minimum.

e. Employees of the Operator shall not smoke or carry lighted cigarettes or tobacco products in the food preparation or serving area.

f Each employee of the Operator will be a citizen of the United States of America or an alien who has been lawfully admitted for permanent residence, as evidenced by an Alien Registration Receipt Card, Form 1-151, or other evidence from the Immigration and Naturalization service that employment will not affect his immigration status.

g. The Operator will employ a full-time, on-site manager who possesses the necessary qualifications to supervise the establishment effectively. The on-site manager will have previously had, as a minimum, two years of consecutive employment in a position with comparable responsibilities. The proposed manager's qualifications (resume) will be subject to the approval of the Contracting Officer. No one other than the person approved by the Contracting Officer will be assigned to manage the vending facility. These provisions also apply to any replacement of the manager.

h. The Operator's manager will be delegated the authority essential to the day-to-day effective operation of the cafeteria for personnel supervision and training, menu planning, purchasing, cost control, sanitation, etc. The Operator's manager will be replaced on 30 days notice upon request of the Contracting Officer if he determines there are operational deficiencies resulting from inferior management.



i. The Operator will at all times provide an adequate staff of food service employees to perform the varied and essential duties, inherent in a successful food service operation. Except as otherwise provided in this contract, staffing will be provided as submitted in the Operator's proposal and any changes are subject to approval of the Contracting Officer.

j. The Operator will pay all employees not less frequently than once every two weeks, without deduction or rebate on any account, except as provided or allowed by law.

k. The Operator will provide adequate, trained relief personnel to substitute for its regular employees when they are absent so that a high quality concession service will be maintained at all time.

l. The Operator will require its employees to comply with such instructions pertaining to conduct and building regulations as are in effect for the control of persons in the building or as may be issued for that purpose by Government representatives.

m. The Operator will schedule an employee-training program that will continue for the duration of this contract and any extensions thereof to insure that its employees perform their jobs with highest standards of efficiency and sanitation

n. All articles found by the Operator, its agents or employees or found by patrons and given to the Operator, will be turned in to the Government as lost-and-found items.

o. Violations of the foregoing responsibilities may result in termination of the Contract

## 20. PAYMENT TO THE GOVERNMENT.

a. Payment of \$\_\_\_\_\_ to the Government will be made monthly, in accordance with the provisions of the contract. Payments will be made not later than the day of each calendar month.

b. All payments will be mailed to the Chief, Accounting Division,

located at \_\_\_\_\_.

Checks will be made payable to the Federal Aviation Administration and will reference the contract number, period of time covered, and facility served.

## 21. EQUIPMENT.

a. Equipment to be provided by the Government. The Government will provide and the Operator may cause the equipment listed herein. The Government will also:

(1) furnish and install replacement equipment when it determines that the original equipment is worn out or beyond economical repair; and

(2) furnish and install such additional equipment of a similar type which it may deem necessary in connection with an expansion of these services, should any expansion be required.

b. Title to all Government furnished equipment will remain in the Government. No Government furnished equipment will be removed from the premises for any purposes except by the Government or with the prior approval of the COR. The Operator will acknowledge receipt of all Government-owned equipment in writing.

c. Minor repairs to Government Furnished Equipment. Throughout the contract period or any extension thereof the Operator will maintain, adjust, and repair the Government furnished equipment provided for his use in a manner satisfactory to the COR; provided, that the responsibility of the Operator for repairs to Government furnished cafeteria equipment will be limited to repairs made at one time which cost less than 10% of the original cost of equipment. The Operator will also repair or replace any Government furnished equipment that may be damaged as a result of his own or his employees fault or negligence, regardless of cost: The Operator will:

(1) Service the dishwasher and care for it in accordance with the instructions of the manufacturer.

(2) Keep the deep fat fryer and toaster clean and in serviceable condition.

(3) Keep the canopy free from grease and thoroughly clean.

(4) Clean air filters daily and grease traps for the dishwasher and sink when required.

c. Replacement or Major Repairs to Government Furnished Equipment. If the cost of repairing a piece of Government furnished equipment will exceed the limitations specified in paragraph b. above or the equipment has become obsolete or no longer useful for its original purpose, the Operator will notify the Contracting Officer so that arrangements may be made for appropriate repairs or replacements. The decision of the Contracting Officer as to whether a piece of equipment is to be repaired or replaced will be final.

d. Equipment to be provided by the Operator. The Operator will provide all required equipment not provided by the Government. The Operator will repair, replace and supplement such equipment as necessary to insure sanitary, efficient and satisfactory operation of the vending facility.

e. Final Disposition of Equipment. At the end of the contract period or extension thereof, all equipment will be disposed of as provided in the contract.

## 22. SURRENDER OF POSSESSION.

a. As of the date this contract expires or is terminated as provided for elsewhere in this contract, the Operator will immediately and peaceably yield up to the Government the premises in good

repair in all respects, reasonable wear and tear excepted, and the Government may without further notice take possession of the premises.

b. Upon prior written notice to the Contracting Office the Operator will have the right at any time during the term of this contract to remove any operating facilities it may erect or install or use in the premises, and any or all fixtures and equipment and other property installed or placed by it at its expense in or about the leased premises; subject, however, to any valid lien which the Government may have thereon for unpaid charges and fees; and provided that, upon removal of any such operating facilities, the Operator will restore the premises to a condition satisfactory to the Contracting Officer.

c. The Operator will be deemed to have abandoned to the Government any operating facilities and other facilities, equipment and property of the Operator which it has failed to remove from the premises or from the possession of the Government within fifteen (15) calendar days after the end of the period of this contract, or effective date of termination thereof, unless the Contracting Officer grant additional time for this purpose in writing; provided, however, that the Government may, prior to the expiration of said fifteen (15) day period, remove same and restore the premises to a satisfactory condition and hold the Operator liable for all costs incident thereto. In the event it is necessary for the Government to remove such facilities, equipment or property, the Government will not be subject to any liability by reason of the removal or the custodial care of same.

## 23. ESTABLISHMENT OF OPERATING FACILITIES.

a. The Operator will provide and install at its own costs and expense, all operating facilities and furnish all supplies and materials required for the proper and adequate operation of the vending facility under this contract.

b. All such installations will be subject to the Contracting Officer's approval for conformity with safety standards and similar criteria and with regulations established for the facility and for compatibility of design, quality, conditions, or color arrangement with the architectural and general character of the vending facility area and the facility. In addition, all installations will conform to applicable state and Federal building, plumbing, electrical, or similar codes or ordinances. The Operator will provide all necessary maintenance for the operating facilities.

## 24. ACCOUNTING RECORDS OF THE OPERATOR.

a. In the event this contract provides for payment of revenue to the Government which is computed in any manner upon the gross receipts or net receipts of the Operator derived from its operations, the Operator will maintain accounting records, in accordance with accepted accounting practices, of all its transactions that are connected with operations under this contract. These records should be kept current during the contract period at the business address of the current operator during the contract period and be retained at that location for a period extending 3 years from the date of termination or expiration of this contract, unless a longer period of time specifically is started elsewhere in this contract.

b. The Operator will permit any verification, examination or audit of these accounting records deemed advisable by the Government. In addition, any verification, examination or audit of the accounting records of any proprietary or affiliate concern during the term of this contract, and for 3 years afterwards, during regular business hours will be allowed.

c. The Operator also will permit inspection by the officers, employees, or representatives of the Government of any accounting, bookkeeping, or similar equipment used by the Operator in the development and maintenance of these accounting records.

## 25. ACCOUNTING DATA.

The Operator will submit a copy of its quarterly incomes statement to the Contracting Officer through the Contracting Officer's Representative.